National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: May 11, 1995

TO: James J. McDermott, Regional Director, Region 31

FROM: Barry J. Kearney, Acting Associate General Counsel, Division of Advice

SUBJECT: Martin Marietta Corporation a/k/a Martin Marietta Technologies, Inc., Cases 31-CA-20925

420-2355, 420-5034, 518-4040-8325, 530-4090-5000, 31-CA-21026

This case was submitted for advice as to whether the Employer violated Section 8(a)(1), (2), and (5) of the Act by withdrawing recognition from one union and recognizing another union as the exclusive representative of all bargaining unit employees, after the Employer purchased another company whose employees were represented by the second union.[(1)]

FACTS

For many years prior to May 1994,[(2)] the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (UAW) represented installation technicians, mechanics, and service employees of the Martin Marietta Corporation a/k/a Martin Marietta Technologies, Inc. (the Employer) working on launch operations of the Titan missile program at Vandenberg Air Force Base, California. The most recent collective-bargaining agreement covering this unit, which consisted of 168 employees, was scheduled to expire in July.

On May 2, the Employer purchased the operations of General Dynamics, including the launch operations of the Atlas missile program at Vandenberg AFB, Cape Canaveral, Florida, and San Diego, California. For many years, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) represented most of these employees at those three facilities; the unit represented by the IAM consisted of at least 344 employees, while another 11 or 12 were represented by the International Brotherhood of Electrical Workers, Local 569, AFL-CIO, or the International Union of Operating Engineers, Local 501, AFL-CIO. The current collective-bargaining agreement between the Employer and the IAM is scheduled to expire in September 1996.

In June and July, the Employer and the UAW held bargaining sessions for a successor collective-bargaining agreement; the Employer's proposals focused upon consolidating the Atlas and Titan launch operations. No agreement was reached and the parties agreed to extend the expired agreement for one year until July 1995. At the close of negotiations, the Employer presented the UAW with a "letter of acknowledgment" which set forth the Employer's position that, due to the Employer's purchase of General Dynamics, the Atlas and Titan launch teams would be merged into a single unit.

In December, the Employer informed the UAW that it had recognized IAM as the exclusive bargaining representative for technicians, mechanics, drivers, and welders for the "Atlas/Titan Consolidated Launch Vehicle Operations." The Employer stated that it would "continue to administer the terms and conditions of the prior UAW labor contract for employees in the new bargaining unit who were previously covered by such agreement, pending the negotiation of a new collective bargaining agreement with the IAM." Since that time: (1) the Employer has ceased remitting deducted dues to the UAW;[(3)] (2) the Employer has refused to accept formal grievances from UAW stewards, requiring that any formal grievances on behalf of employees in both programs be filed by IAM stewards;[(4)] (3) the Employer has announced dovetailed seniority for layoffs of the two units, and; (4) the Employer changed the locks on the UAW union bulletin board, giving the IAM the keys to the new locks.

When the UAW tendered its Section 8(d) notice requesting negotiations for a successor collective-bargaining agreement, the Employer responded by letter, stating in part:

the prior labor agreement with the UAW was extinguished on December 23, 1994. The affected employees are now represented by the IAM, as their exclusive bargaining representative

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Any bargaining or negotiations for employees in the new consolidated launch operations bargaining unit must be with the IAM only.

After meeting with the Titan employees and informing them that the IAM would be negotiating for them,[(5)] the IAM reached a collective-bargaining agreement with the Employer covering the Titan employees. The IAM held a ratification vote on the tentative agreement on April 30, 1995. Only IAM members were eligible to participate in the ratification vote; the Titan employees were given the opportunity to become IAM members at the vote.

In December, the UAW and individual employees filed a series of charges alleging that the Employer's withdrawal of recognition from the UAW violated Section 8(a)(1) and (5) of the Act, and that its recognition of the IAM violated Section 8(a)(1) and (2) of the Act.

The Region's investigation has revealed that, since the Employer purchased the Atlas launch operations, the Atlas and Titan missile programs at Vandenberg AFB continue to be housed in separate launch complexes located approximately five or six miles apart; there is no interchange of tools and equipment. While the skills and educational requirements for the employees working the two missile programs are similar, there have been no temporary or permanent transfers or other employee interchange; indeed, employees have separate U.S. Air Force certifications for the two programs that are not transferable. The Employer now employs one program manager and a single labor relations manager to oversee both the Atlas and Titan programs; the approximately 20 "chiefs" and numerous other supervisors have remained the same as they were before the Employer's take over and continue to oversee only one of the programs.

ACTION

We conclude that the Employer violated Section 8(a)(1), (2), and (5) of the Act by withdrawing recognition from the UAW, and by recognizing the IAM, as the exclusive representative of the Titan program employees, as the Atlas and Titan programs each remain separate appropriate bargaining units.

The Board has made it clear that, where two bargaining units remain separate appropriate bargaining units, an employer violates Section 8(a)(1), (2) and (5) when it unilaterally withdraws recognition from, or refuses to recognize, the union representing one of those units, and recognizes the other union as the representative of the employees in both units.[(6)] Moreover, it is well established that, if the union representing either of two previously-existing bargaining units objects to a proposed merger of the units into a single bargaining unit, the Board will find that the units have merged only where the combined unit is now the sole appropriate bargaining unit.[(7)]

In the instant case, we conclude that the Atlas and Titan units remain separate appropriate bargaining units. In particular, we note that there have been no temporary or permanent transfers or other employee interchange; indeed, such interchange would seem to be barred by the separate, non-transferable U.S. Air Force certifications for employees working on each of the two programs.[(8)] Moreover, the continuing appropriateness of the separate bargaining units is evident from the past separate bargaining history and the physical separation of the two programs; since the Employer purchased the Atlas launch operations, the Atlas and Titan missile programs at Vandenberg AFB continue to be housed in separate launch complexes located approximately five or six miles apart, and there is no interchange of tools and equipment. Finally, we note that, while the Employer now employs one program manager and a single labor relations manager to oversee both the Atlas and Titan programs, this limited degree of centralized management does not filter down to the bargaining unit employees; the approximately 20 "chiefs" and numerous other supervisors have remained the same as before the Employer's purchase of the Atlas program and continue to oversee only one of the programs.

Thus, it is clear that the Employer is not faced with a merged bargaining unit, which the Board has elsewhere described as:

a situation in which employees historically represented by different labor organizations have been merged into a single work force in which they work side by side in similar job classifications performing like functions under common supervision.[(9)]

Nor does the possibility that any future changes made by the Employer might render the two bargaining units inappropriate privilege the Employer's past conduct, as any such claim as to a future bargaining unit would be too speculative.[(10)]

Therefore, as the two groups of employees remained separate appropriate bargaining units, we conclude that the Employer violated Section 8(a)(1), (2), and (5) of the Act by withdrawing recognition from the UAW, and by recognizing the IAM, as the exclusive representative of the Titan program employees. Accordingly, complaint should issue, absent settlement.

B.J.K.

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[1] This case was also submitted for advice as to whether interim injunctive relief should be sought under Section 10(j) of the Act. The need for Section 10(j) relief will be discussed in a separate Advice Memorandum.

[2] All dates hereinafter are in 1994, unless otherwise noted.

[3] The Employer has continued to deduct dues, but claims that it is depositing the money in an escrow account until the instant charges are resolved.

[4] Consistent with this change, the Employer has unilaterally ceased its long-standing practice of allowing UAW stewards to take off every other Friday with pay to process grievances.

[5] The IAM also requested input from UAW officials on the IAM's bargaining for the Titan employees.

[6] See, e.g., Reliable Trailer and Body, Inc., 295 NLRB 1013, 1018-1019 (1989) (employer violated Act by withdrawing recognition from UAW and recognizing IAM local -- units remained separate); Cherokee Marine Terminal, 287 NLRB 1080, 1100-1101 (1988); Shortway Suburban Lines, Inc., 286 NLRB 323, 328 (1987).

[7] See, e.g., Martin Marietta Co., 270 NLRB 821, 822 (1984). Traditional criteria used in unit determination issues include: the extent of employee interchange; past bargaining history, similarity of skills, working conditions and duties; geographical proximity; and degree of centralized management and control of labor relations. Ibid. See also, e.g., School Bus Services, Inc., 312 NLRB 1, 5 (1993); Executive Resources Associates, Inc., 301 NLRB 400 (1991).

[8] The Board has placed great reliance on employee interchange in unit merger questions, on occasion relying almost exclusively on such considerations. See, e.g., Executive Resources Associates, Inc., 301 NLRB at 401 ("the lack of significant employee interchange between the two groups . . . is a strong indicator that [one group of] employees enjoys a separate community of interest"); School Bus Services, Inc., 312 NLRB at 1 n. 1; Spring City Knitting Co. v. NLRB, 647 F.2d 1011, 1015 (9th Cir. 1981), quoted by the Board in Executive Resources Associates, Inc., 301 NLRB at 401 n. 10 ("[t]he frequency of employee interchange is a critical factor in determining whether employees who work in different [groups] share a 'community of interest' sufficient to justify their inclusion in a single bargaining unit").

[9] Boston Gas Co., 221 NLRB 628, 628-629 (1975).

[10] See, e.g., Rosehill Cemetery Association, 281 NLRB 425, 426 n. 4 (1986) (Section 8(a)(5) refusal to bargain found where planned merger of two companies had not yet occurred).